

35 U.S.C. § 102(e) as allegedly being anticipated by Hargis (U.S. Patent No. 5,674,951), and claim 27 under 35 U.S.C. § 102(e) as allegedly being anticipated by Hargis or, in the alternative, under 35 U.S.C. § 103(a) as allegedly being obvious over Hargis in view of the Examiner's Notice. For the reasons set forth herein, each of the remaining objections/rejections is overcome.

OATH/DECLARATION

In the Office Action, the Examiner has indicated that a new oath/declaration is required under 37 C.F.R. § 1.67.

Applicants respectfully submit that the subject matter presently claimed in the above-referenced patent application is fully supported by the specification as originally filed and, thus, no new matter has been introduced. However, in order to expedite prosecution, Applicants submit concurrently herewith an unexecuted Supplemental Declaration of the two inventors of the above-referenced patent application (*i.e.*, Aslam A. Malik and Thomas G. Archibald). An executed copy of the Supplemental Declaration will be provided to the Examiner once it is available to the undersigned. The Examiner's concerns are overcome by this Supplemental Declaration of Drs. Malik and Archibald.

DOUBLE PATENTING

Claims 20-28 remain rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 of U.S. Patent No. 5,703,194. In the prior Office Action, the Examiner indicated that the obviousness-type double patenting rejection can be overcome by the filing of a Terminal Disclaimer (*see*, page 5 of the Office Action mailed June 25, 2001).

In order to expedite prosecution of the above-referenced patent application, Applicants file concurrently herewith a Terminal Disclaimer in compliance with 37 C.F.R. § 1.321. In view of the filing of this Terminal Disclaimer, Applicants respectfully request that this obviousness-double patenting rejection be withdrawn.

REJECTIONS UNDER 35 U.S.C. § 102(e)/§ 103(a)

Claims 20-26 and 28 have been rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Hargis (U.S. Patent No. 5,674,951). In addition, claim 27 has been rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Hargis or, in the alternative, under 35 U.S.C. § 103(a) as allegedly being obvious over Hargis in view of the Examiner's Notice.

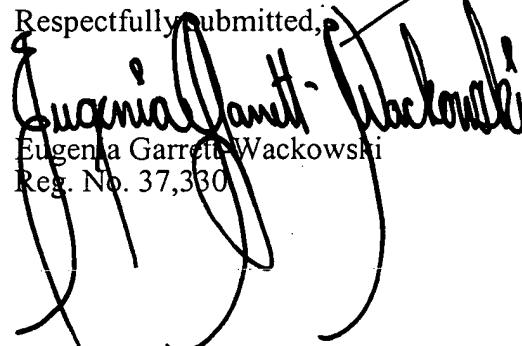
In order to expedite prosecution of the present case and without commenting on the relevance of Hargis, a declaration by the two inventors of the above-referenced patent application (*i.e.*, Aslam A. Malik and Thomas G. Archibald) has been prepared pursuant to 37 C.F.R. § 1.131. The declaration provides evidence which unequivocally establishes that Applicants conceived of and reduced to practice the claimed invention *prior to* the effective filing date of Hargis, *i.e.*, *May 20, 1994*. An executed copy of the declaration will be provided to the Examiner once it is available to the undersigned. The filing of the executed declaration will remove Hargis as prior art against the above-referenced patent application such that Hargis *cannot* form the basis of an anticipation rejection under 35 U.S.C. § 102(e) or an obviousness rejection under 35 U.S.C. § 103(a).

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 925-472-5000.

Respectfully submitted,

  
Eugenia Garrett Wackowski  
Reg. No. 37,330

TOWNSEND and TOWNSEND and CREW LLP  
Two Embarcadero Center, 8<sup>th</sup> Floor  
San Francisco, California 94111-3834  
Tel: 925-472-5000  
Fax: (415) 576-0300  
EGW:lls

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